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VIA E-MAIL

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Re: Schnitzer Steel Industry, Inc.'s Notice of Intent to Comply and
Description of Sufficient Cause Defenses to Unilateral Administrative
Order for Remedial Design for the River Mile 3.5 East Project Area of the
Portland Harbor Superfund Site

Dear Stephanie and Eva:

Pursuant to Sections 44 and 45 of the U.S. Environmental Protection Agency ("EPA") Unilateral Administrative Order for Remedial Design ("RD") for the River Mile 3.5 East ("RM 3.5E") Project Area of the Portland Harbor Superfund Site ("Site") as modified by Amendment No. 1 ("UAO"), Schnitzer Steel Industries, Inc. ("Schnitzer Steel") provides the following notice of intent to comply and description of sufficient cause defenses to the UAO.

I. NOTICE OF INTENT TO COMPLY

Schnitzer Steel provides this notice of intent to comply with the UAO. This notice is provided under duress due to the threat of EPA enforcement as described in Part I.B below, under protest of the factors identified in Part I.C, in reliance on EPA's assurances as summarized in Part I.D, and while reserving the sufficient cause defenses in Part II.

A. Schnitzer Steel's Actions to Advance an Effective and Efficient Remedy

Schnitzer Steel is committed to moving the Site toward an effective and efficient remedy that achieves EPA's cleanup goals while minimizing unnecessary costs, burden on the community and additional environmental impacts. As described in Schnitzer Steel's attached Statement of Position, Schnitzer Steel demonstrated that commitment in 2017 by voluntarily stepping forward to join with three other parties in the Pre-RD Group to perform a comprehensive Site-wide sampling effort at EPA's request and under strict EPA oversight to update the 2004 data that EPA had used to select the remedy in its 2017 Record of Decision ("ROD"). That data showed that Site conditions have improved significantly since 2004 due to source control efforts, natural attenuation and in-water early action projects and that the remedy should be updated to reflect current Site conditions. If the remedy is updated by applying the same analysis used in the ROD on the 2004 data to the new data collected in 2018 and 2019, the remedy could be completed much more quickly, at less than half the cost, and with far less disruption to the community, while achieving the same remedial action objectives as the ROD remedy.

Over the past several months, Schnitzer Steel has joined with other interested parties in requesting that EPA update the remedy based on the new data to ensure that the remedy addresses the actual conditions at the Site. To date, EPA has declined to update the remedy, stating that it intends to proceed with the ROD remedy based on 16-year old data. If EPA continues down this path, it would require parties to design a remedy that was selected based on Site conditions that have not existed for 16 years. As a result, billions of dollars would be wasted over the next few decades on additional work that provides no significant benefit and with substantial disruption to the community and environmental impacts resulting from additional, unnecessary dredging.

Given the substantial, long-term harm that would be caused by EPA's refusal to update the remedy, Schnitzer Steel joined with other interested parties on March 9, 2020, in submitting a Petition for Modifications to the Portland Harbor Selected Remedy ("Petition") based on the new data. The Petition describes the significance of the new data and details various ways in which the remedy should be updated to reflect current Site conditions. The Petition also responds to EPA's assertions including those summarized in EPA's March 2, 2020, letter to the Pre-RD Group, and summarizes the flawed process and analysis that led to EPA's January 2017 ROD, which was issued before the new data was available. Earlier today, we received a letter from EPA regarding the Petition. While Schnitzer Steel has not yet had time to fully review EPA's letter, Schnitzer Steel stands by the positions outlined in the Petition.

The remedy should be updated before, or concurrently with, the initial phases of RD. In discussions with EPA, Schnitzer Steel offered to begin the sufficiency assessment and source control related tasks under an RD Statement of Work ("SOW") while the remedy is still being updated to ensure no material delay in the start of RD work. EPA has not accepted this offer. Since it is impossible to separate the RD work from the remedy that is to be designed, the remedy should be updated now as requested in the Petition before the parties spend the next four years or more designing the wrong remedy for the Site.

In addition, EPA still has not provided information it promised the Pre-RD Group in 2019 regarding its analysis of the new data as described in Part 6 of the Statement of Position. These materials include information that may help explain EPA's decision to proceed with the remedy based on 16-year old data including backup documents showing how EPA's consultants at CDM Smith reached the very troubling conclusions reflected in their draft report that EPA provided last year to the State of Oregon and Natural Resource Trustees as discussed in the Statement of Position. By email dated April 29, 2020, however, EPA backed away from the Administrator's prior promise to provide such information underlying its analysis, asserting that the information requested "is not necessary for the Pre-RD Group to complete an analysis of EPA's comments consistent with industry standards." While such backup documentation is critical for understanding CDM Smith's unsubstantiated conclusion that the remedy does not need to be updated, EPA now contends "the additional information is not currently in EPA's possession and would take a significant amount of time and resources necessary to create and produce the information." If it is true that EPA has not reviewed or considered this key information underlying CDM Smith's conclusion that the remedy should proceed based on badly outdated data, that fact may help explain why EPA has not recognized the need to update the remedy. Schnitzer Steel therefore strongly requests that EPA obtain this key information from its consultants and take the information into account in re-assessing the Petition. Schnitzer Steel also reiterates its request that EPA provide these materials to Schnitzer Steel and the other members of the Pre-RD Group to help inform future discussions regarding the remedy and RD work.

B. EPA's Refusal to Negotiate on Substantive Issues

While discussions with EPA regarding the remedy were ongoing over the past several months, Schnitzer Steel has also sought to negotiate with EPA on its request that parties commence RD work at the Site. In early 2019, Schnitzer Steel agreed to talk with EPA regarding RD work in the RM 3.5E Project Area. In July 2019, at EPA's request, Schnitzer Steel prepared proposed edits and comments on EPA's draft RD Administrative Settlement Agreement and Order on Consent ("ASAO") and related SOW. Unfortunately, EPA consistently refused to negotiate on the comments it had requested, instead insisting that Schnitzer Steel sign an ASAO consistent with EPA's model. EPA also ignored Schnitzer Steel's multiple requests to convene a meeting of the potential performing parties at the Site to discuss a path forward as detailed in Part 3 of Schnitzer Steel's attached Statement of Position.

On March 2, 2020, EPA demanded that Schnitzer Steel state within one week whether it would agree to enter into an ASOAC for RD work in the RM 3.5E Project Area, and EPA established an extremely tight schedule for execution. In the short period since EPA sent its March 2 letter, COVID-19 has spread rapidly. On March 13, 2020, a National Emergency was declared, and governments in numerous jurisdictions have instituted increasingly stringent measures to help control the spread of the virus.

By letter dated March 23, 2020, Schnitzer Steel requested an extension on EPA's deadlines and described how its efforts to respond to EPA have been severely hampered by the still-evolving COVID-19 public health crisis. As described in Part 2 of the attached Statement of Position, Schnitzer Steel is addressing pressing worker safety issues and responding to the quickly-changing patchwork of state and local restrictions, business closure, shelter-in-place and

stay-at-home orders for its operations across 23 states and Puerto Rico and numerous local jurisdictions. Since Schnitzer Steel's operations have been identified as "Critical Manufacturing Sector" operations under U.S. Department of Homeland Security guidelines and fall under the "Essential Business" classification of state and local orders, it is critical that Schnitzer Steel's facilities continue to operate through this public health crisis. Schnitzer Steel's management, legal, environmental and health and safety staff are working around the clock to respond to this crisis and to keep production moving in a safe and compliant manner. Any action by EPA that unnecessarily distracts companies from responding to the pandemic during these critical weeks runs counter to the public interest.

On March 26, 2020, EPA denied Schnitzer Steel's request for an extension and forwarded the signed UAO, which set another series of extremely short deadlines. During an April 10, 2020 conference with EPA to discuss the UAO, Schnitzer reiterated its pressing need for an extension and explained how the looming deadline for a notice of intent to comply could distract the company from its COVID-19 response efforts. On April 17, a few days before the deadline for a notice of intent to comply, EPA notified Schnitzer Steel and the other respondent, MMGL LLC ("MMGL") that it intended to modify the UAO. On April 27, we received from EPA an Amendment No. 1 to the UAO which also included certain limited changes to the SOW schedule and set a new deadline of today, May 4, for a notice of intent to comply with the modified UAO. In these documents, EPA corrected its description of MMGL, extended by 15 to 30-days certain initial deadlines in the SOW and moved the upstream border of the RD Project Area to the upstream end of Schnitzer Steel's property boundary. While Schnitzer appreciates these modest changes, they do not address most of the issues Schnitzer Steel raised with EPA as summarized in the attached Statement of Position as discussed in Part I.C below.

While EPA's April 17 decision to modify the UAO and SOW re-set the deadline for a notice of intent to comply from April 20 to today, this new deadline provided little relief from the original deadlines given the short notice of EPA's plan to modify the UAO. Schnitzer Steel management and staff have still been required to shift their focus from pressing COVID-19 response efforts to address EPA's artificial deadlines over the past several weeks.

Regarding EPA's changes to the SOW schedule for the RD work, Schnitzer Steel appreciates the 15 to 30-day extensions for certain initial tasks. The additional time may provide some relief for the most immediate work deadlines. However, EPA's insistence on pursuing this UAO in the midst of the COVID-19 National Emergency is wholly unnecessary. During the April 10 conference, Schnitzer Steel asked if EPA believes that conditions in the RM 3.5E Project Area present an "imminent and substantial endangerment of the public health or welfare or the environment" so as to require work to start in the midst of this public health crisis. In response, EPA noted only that this work is important and that it wants to keep things moving at the Site. While Schnitzer Steel shares EPA's desire to move forward, EPA took 16 years to select the remedy. The remedial design work is expected to take nearly four years, and the remedial action won't be completed for nearly 20 years even under EPA's projected schedule. While Schnitzer Steel agrees that that RD work is important, there is no reason to distract companies from addressing a National Emergency by imposing immediate deadlines to design a remedy that won't be completed for nearly 20 years.

C. Flaws in the UAO and Proposed RD Work

Schnitzer Steel also has serious concerns with various aspects of the UAO and RD work as required in the SOW. Most significantly:

- **EPA’s failure to update the remedy prior to RD will cause substantial waste and disruption and endanger the success of the remedy.** As summarized above, the Site remedy should be updated based on the new data as detailed in the Petition before, or concurrently with, the initial phase of RD work. In insisting that RD work be performed without updating the remedy, EPA is forcing Schnitzer Steel and other parties to design a remedy based on data that is more than 16 years old. Due to EPA’s actions, Schnitzer Steel is now faced with the choice of either designing the wrong remedy based on outdated data as demanded by EPA or facing an enforcement action.
- **The timing and sequence of tasks under the SOW creates a substantial risk of waste, inefficiency, delay and duplication of effort.** As discussed in Part 7 of the Statement of Position, the SOW appears to require RD work to proceed lockstep with each task performed upon the completion of the last with no express provisions for a check-in or determinations as to the timing of subsequent work. Given site-specific factors in the RM 3.5E Project Area, RD work should be timed and sequenced to ensure that it does not need to be redone later due to uncontrolled sources or stale data. For example, given site-specific factors in the RM 3.5E Project Area, Schnitzer Steel has strongly requested that EPA modify the timing and phasing of the RD such that the work would start with the sufficiency assessment, followed by a source sufficiency-focused sampling effort. Once EPA concludes that the sources are adequately assessed and that any source control measures have been identified with milestones and an implementation schedule, EPA can consider the optimal timing of field sampling in this area based on identified factors as discussed in Part 7 of the attached Statement of Position. Under the current SOW schedule, there is a substantial risk that field sampling and other aspects of the RD work will need to be done twice at great expense and with additional delays.
- **EPA has failed to make reasonable efforts to compel work from as many parties as practicable.** In identifying only Schnitzer Steel and MMGL as respondents in the UAO, EPA has failed “to make reasonable efforts to identify all parties with CERCLA liability at a site and to arrange for or compel cleanup from as many of them as practicable” in accordance with EPA guidance. *See* EPA, Evaluation of, and Additional Guidance on, Issuance of Unilateral Administrative Orders (UAOs) for RD/RA, OSWER Directive No. 9833.2c (June 20, 1991). As noted in Part 11 of the attached Statement of Position, numerous other entities have substantial liability in the RM 3.5E Project Area. By far the largest facility that ever operated in this portion of the river was the United States’ own shipyard operated by its contractor Oregon Shipbuilding Corporation (“OSC Shipyard”) during World War II. The OSC Shipyard was the largest industrial operation in the history of the City of Portland, with operations involving large

quantities of PCBs, PAHs, dioxin/furan and metals among other constituents of concern, and uncontrolled discharges of stormwater, sanitary sewage and other releases to the SMAs within the RM 3.5E Project Area. Neither the U.S. Maritime Administration nor any of the other industrial operators were included in EPA's demand letters over the past several months, and Schnitzer Steel is not aware of EPA making any similar requests to those entities or setting any deadlines such as those imposed on Schnitzer Steel and MMGL.

- **Certain provisions of the UAO exceed EPA authority.** Section XII of the UAO purports to require respondents to pay EPA for its alleged response costs incurred in connection with the RD work, while Section XV purports to require respondents to provide financial assurance in the amount of EPA's estimate of the cost of the work obligations. While EPA can request such arrangements as part of a negotiated ASAO, EPA does not have the authority under 42 U.S.C. §9606(a) to order a respondent to pay money or to secure financial assurance since such actions do not constitute acts of abatement. To seek monetary relief, EPA would need to pursue a judicial action for cost recovery under 42 U.S.C. §9607, and it is improper for EPA to attempt to use its abatement authority under 42 U.S.C. §9606(a) to sidestep the proper statutory requirements. In providing this notice of intent to comply, Schnitzer Steel reserves its rights to request proper documentation of EPA's alleged oversight costs and to determine based on available information whether specific requests for reimbursement or financial assurance are valid and appropriate.

While Schnitzer Steel is providing this notice of intent to comply, it strongly objects to these aspects of the UAO, SOW and RD work and is providing this notice under protest of these and other considerations.

D. EPA's Assurances Regarding the UAO and RD Work

In recent discussions and communications, EPA has made various representations to Schnitzer Steel and has provided assurances regarding certain aspects of the RD work. In submitting this statement of intent to comply, Schnitzer Steel is acting in reliance on these EPA assurances, which include the following:

- **Timing and sequencing of RD work.** During the April 10 conference, EPA assured Schnitzer Steel that it has no interest in requiring unnecessary work and is committed to avoiding undue waste during the RD process. While EPA did not modify the SOW schedule to address the sequencing concerns discussed above, it assured Schnitzer Steel that, if Schnitzer Steel agrees to comply with the UAO, EPA will work with the company during RD to establish a timing and phasing of the work that increases efficiency and avoids unnecessary duplication of effort. In submitting this statement, Schnitzer Steel is relying on EPA's representations that it will work with Schnitzer Steel in RD to establish a plan for the timing and phasing of the RD work to minimize the risk of waste, duplication and delay.

- Sediment bed elevations.** In its March 2 letter to the Pre-RD Group, EPA acknowledged that there are inconsistent statements in the ROD regarding maintaining pre-design sediment bed elevations and stated that it would make modifications to the SOW that EPA characterized as “allowing mitigation as part of the remedy to offset the effects of capping in the shallow and/or intermediate region within a sediment management area, if appropriate and in consultation with the Federal Emergency Management Agency.” During the April 10 conference, EPA confirmed that this statement was intended to mean that EPA staff will have discretion during RD to require, or not require, dredging in areas to be capped depending on site specific factors. EPA also noted that a Site-wide flood assessment plan will be prepared. In submitting this statement, Schnitzer Steel is relying on EPA’s representation that it will reasonably consider requests not to require dredging in certain areas to be capped based on application of identified factors.
- Data replacement.** In its March 2 letter to the Pre-RD Group, EPA also agreed that it may be reasonable during RD to replace some of the old data considered in the ROD with newer data and stated that the decision would be made on a site-specific basis. This position is also reflected in the current version of EPA’s RD Guidelines. While data replacement in RD cannot fix the problems created by EPA’s refusal to update the remedy, a coherent set of rules for data replacement is badly needed given the age of the data used in the 2017 ROD. During the April 10 conference, EPA stated that it will work with the performing parties in making these determinations. In submitting this statement, Schnitzer Steel is relying on EPA’s representation that data replacements will be established, and that EPA will work with Schnitzer Steel to identify and follow those rules in the RM 3.5E Project Area.
- Dioxin/furan cleanup levels.** In its March 2 letter to the Pre-RD Group, EPA also agreed that the data used to establish the dioxin/furan cleanup levels in the ROD are limited. EPA acknowledged that this information was supplemented by Pre-RD data and stated that EPA in coordination with Oregon DEQ would fund the collection of additional upstream dioxin/furan data. In submitting this statement, Schnitzer Steel is relying on EPA’s representation that it will obtain the additional data on dioxins/furans and use that data to update the cleanup levels as appropriate.
- Schedule Accommodations.** In its March 26, 2020 letter rejecting Schnitzer Steel’s request for an extension and again at the April 10 conference, EPA stated that it will consider “reasonable accommodations” in the event certain work deadlines cannot be met due to the COVID-19 public health crisis. Later that same day of April 10, EPA issued supplemental Interim Guidance on Site Field Work Decisions due to Impacts of COVID-19, which identified certain factors to be considered in deciding on the timing of field work and recognized that even non-field work may be impacted if needed materials become unavailable. While EPA declined to provide any extensions during the April 10 conference, it assured Schnitzer Steel that, if Schnitzer Steel complies with the UAO, it will work with

the company to address reasonable requests for extensions as circumstances arise. In the revised SOW attached to the modified UAO, EPA provided modest extensions to certain initial work deadlines. In submitting this statement, Schnitzer Steel is relying on EPA's representation that EPA will work with Schnitzer Steel in good faith moving forward to make "reasonable accommodations" in the event certain work deadlines cannot be met.

II. SUFFICIENT CAUSE DEFENSES

Paragraph 45 of the UAO purports to require respondents to "describe, using facts that exist on or prior to the Effective Date, any 'sufficient cause' defense[s] asserted by such Respondent under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(c)(3)." EPA does not have the authority under Section 106 or any other law to order Schnitzer Steel to disclose its position on current or potential future defenses. Nonetheless, Schnitzer Steel provides the following summary while reserving its rights to raise any other facts or sufficient cause defenses in the future.

Schnitzer Steel has sufficient cause not to comply with the UAO and certain specific portions of the UAO and related SOW for various reasons including:

- EPA is acting in an arbitrary and capricious manner in ordering RD work to commence at the Site without first updating the remedy based on new Site data before, or concurrently with, the initial stages of RD for the reasons discussed in the Petition, which Schnitzer Steel incorporates into this notice;
- EPA is acting in an arbitrary and capricious manner in ordering RD work to commence at the Site since the remedy itself as described in the ROD is arbitrary and capricious for the reasons identified in the Petition;
- EPA is acting in an arbitrary and capricious manner in ordering RD work to commence in the RM 3.5E Project Area before upland and upstream sources are controlled and before the timing of future remedial action in this downstream portion of the Site is known without, at a minimum, establishing a process in the SOW for timing and sequencing the RD work to reduce the substantial risk that RD work may need to be re-done in the future, which would cause substantial waste, duplication of effort and delay in violation of the National Contingency Plan ("NCP");
- EPA acted in an arbitrary and capricious manner in issuing the UAO at this time since the agency failed to adequately consider the harm imposed by its decision to move forward with long-term RD work at this time without providing reasonable accommodations given the ongoing COVID-19 pandemic;
- The UAO is invalid since EPA has not made a sufficient finding that conditions in the RM 3.5E Project Area may pose an "imminent and substantial endangerment to the public health or welfare or the environment" as required by 42 U.S.C.

Section 9606(a) to require the commencement of RD at this time through an enforcement order; and

- The UAO is invalid since it includes provisions that exceed EPA's statutory authority, including Section XII's cost reimbursement provisions and Section XV's financial assurance provisions.

Consistent with the factors and considerations outlined above, Schnitzer Steel provides this notice of intent to comply with the UAO. Nothing in this letter constitutes an admission of any factual allegation or legal conclusion in the UAO, nor does Schnitzer Steel waive any rights or defenses by providing this notice and summary of sufficient cause defenses. Moreover, Schnitzer Steel reiterates its position that EPA should update the remedy based on the new data as provided in the Petition to reduce needless waste and disruption and to ensure that Schnitzer Steel and other parties are not forced to design the wrong Site remedy based on outdated data. Schnitzer Steel also requests that EPA reconsider its position on the issues summarized above and modify its approach and the requirements of the UAO and SOW to advance the effective and efficient remediation of the Site.

Sincerely,



Greg A. Christianson

Attachment: Schnitzer Steel's April 15, 2020 Statement of Position on the UAO

**Schnitzer Steel Industry, Inc.’s Statement of Position on the
Unilateral Administrative Order for Remedial Design for River Mile 3.5 East
Portland Harbor Superfund Site
April 15, 2020**

Schnitzer Steel Industries, Inc. (“Schnitzer Steel”) provides the following statement of position on matters pertinent to the Unilateral Administrative Order (“UAO”) for Remedial Design (“RD”) for the River Mile 3.5 East (“RM 3.5E”) Project Area of the Portland Harbor Superfund Site (“Site”). Schnitzer Steel appreciated the opportunity to speak with EPA during the telephonic conference on April 10, 2020. The following statement builds upon our discussion during the April 10 conference and identifies issues and concerns related to the UAO.

1. Schnitzer Steel is committed to moving the Site toward an effective and efficient remedy that achieves EPA’s remedial action objectives while minimizing unnecessary costs, burden on the community and environmental impacts

Schnitzer Steel supports a Portland Harbor cleanup that makes sense for the community based on the best available data and remains willing to work with EPA toward moving the Site forward.

In 2017, Schnitzer Steel joined with the three other parties in the Pre-RD Group to answer EPA’s call to perform a comprehensive Site-wide sampling effort to update the 2004 data that EPA had used to select the remedy in its 2017 Record of Decision (“ROD”). That sampling was completed in eighteen months under strict EPA oversight.

In subsequent discussions with EPA, the Pre-RD Group and other interested parties have pressed EPA to use the new data to update the remedy consistent with EPA guidance, practice at other sites and recommendations of EPA’s Superfund Task Force. To date, EPA has declined, stating that it intends to proceed with the ROD remedy based on 16-year old data. On March 9, 2020, Schnitzer Steel and other parties submitted a Petition for Modifications to the Portland Harbor Selected Remedy (“Petition”) based on the new data, which is still pending. If these changes are made, a remedy achieving EPA’s goals could be completed much more quickly while minimizing unnecessary costs and burdens on the community as discussed in more detail in Part 4 below.

While those discussions regarding the remedy were ongoing, Schnitzer Steel has also sought to negotiate with EPA on its request that parties start RD work at the Site. In early 2019, Schnitzer Steel agreed to talk with EPA regarding RD work in the RM 3.5E Project Area. In July 2019, at EPA’s request, Schnitzer Steel prepared proposed edits and comments on EPA’s draft RD Administrative Settlement Agreement and Order on Consent (“ASAOC”) and related Statement of Work (“SOW”). Unfortunately, EPA refused to negotiate on the comments they had requested and ignored a proposal to convene a meeting of the potential performing parties to discuss the comments.

Over the past five weeks, in the midst of the COVID-19 National Emergency, EPA has issued new demands to Schnitzer Steel, setting extremely short deadlines. On March 26, 2020, thirteen days after the President declared a National Emergency, EPA refused a request for an extension on its artificial deadline for execution of an RD ASAO and forwarded a UAO ordering Schnitzer Steel to commence RD work in the RM 3.5E Project Area, a long-term project that is not expected to be completed for at least four years. EPA's business-as-usual approach in the face of this public health crisis has threatened to distract companies from their COVID-19 response efforts during these critical weeks as discussed in Part 2 below.

On April 10, 2020, Schnitzer Steel participated in a telephonic conference with EPA to discuss the UAO. During the conference, EPA stated that it is willing to work with Schnitzer Steel if it agrees to comply with the UAO and will consider "reasonable accommodations" on the initial work schedule. While we found the discussion helpful and we appreciate the assurances, Schnitzer Steel and various other stakeholders have previously relied to their detriment on similar representations by EPA Region 10 staff in the past, and EPA offered few details in response to the concerns including those described below.

While Schnitzer Steel's management, legal, and environmental, health and safety staff are, and must be, fully focused on COVID-19 response efforts at this time, Schnitzer Steel is submitting this statement prepared predominantly by outside counsel to share serious concerns regarding the RD UAO, to again request that EPA defer these artificial deadlines given the current public health crisis, and to request certain specific changes to the UAO and SOW in the event Schnitzer Steel complies with the UAO.

Since EPA's response to this statement could help inform Schnitzer Steel's decision on whether to comply with the UAO, it would be helpful if EPA can address these issues prior to any deadline for Schnitzer Steel to provide a notice of intent to comply.

2. EPA's decision to impose short-term deadlines for this long-term UAO in the midst of the COVID-19 National Emergency is unreasonable, unnecessary and counter to the public interest

On March 2, 2020, EPA demanded that Schnitzer Steel state within one week whether it would agree to enter into an ASOAC for RD work in the RM 3.5E Project Area, and EPA established an extremely tight schedule for execution. As discussed in Part 3 below, this new demand followed several months of relative inaction by EPA on RD where they refused to negotiate on the comments we submitted. In the short period since EPA sent its March 2 letter, COVID-19 has spread rapidly. On March 13, 2020, a National Emergency was declared, and governments in numerous jurisdictions have instituted increasingly stringent measures to help control the spread of the virus.

By letter dated March 23, 2020, Schnitzer Steel requested a thirty-day extension on EPA's deadlines and described how its efforts to respond to EPA have been severely hampered by the still-evolving public health crisis. For the past four weeks, Schnitzer Steel has been addressing

pressing worker safety issues and responding to the quickly-changing patchwork of state and local restrictions, business closure, shelter-in-place and stay-at-home orders for its operations across 23 states and Puerto Rico and numerous local jurisdictions. As a manufacturer of finished steel products and a provider of raw metals for industry and infrastructure projects, Schnitzer's Steel's operations have been identified as "Critical Manufacturing Sector" under U.S. Department of Homeland Security guidelines. Moreover, interruption of Schnitzer Steel's metal recycling operations would quickly result in adverse impacts on health, safety and environment from the discarding and accumulation of unused vehicles, broken appliances, tires and other materials. Consistent with the President's guidance on maintaining critical infrastructure operations, it is crucial that these facilities continue to operate through this public health crisis.

Schnitzer Steel's management, legal, environmental and health and safety staff are now working around the clock to respond to this crisis and to keep production moving in a safe and compliant manner. As a result, Schnitzer Steel's management has not yet had sufficient time to fully consider EPA's demand.

On March 26, 2020, EPA denied the request for an extension and forwarded the signed UAO, which set another series of extremely short deadlines. While EPA stated that it will consider "reasonable accommodations" if Schnitzer Steel agrees to comply but cannot meet some of the future work deadlines, it asserted that the initial tasks can be completed remotely, so they should proceed.

As we explained during the April 10 conference, EPA's March 26 letter missed the point of Schnitzer Steel's request for an extension. The current difficulties are not limited to remote working and social distancing. While those issues can be challenging, the primary impediments for meeting the most immediate deadlines under the UAO have resulted from the fact that Schnitzer Steel's management, legal and environmental, health & safety staff are, and must be, fully focused on responding to the COVID-19 National Emergency and ensuring that its facilities can continue to operate in a safe manner. Any action by EPA that unnecessarily distracts companies from responding to this public health crisis during these critical weeks is doing harm.

During the April 10 conference, Schnitzer Steel inquired as to whether EPA believes that conditions in the RM 3.5E Project Area present an "imminent and substantial endangerment of the public health or welfare or the environment" so as to require work to start now in the midst of this public health crisis. In response, EPA noted only that this work is important and that it wants to keep things moving at the Site. While Schnitzer Steel shares EPA's desire to move forward, the UAO is for a design project to be performed over the next four years. EPA took 16 years to select the remedy. The remedial design work is expected to take nearly four years to complete, and the remedial action won't be completed for 20 years even under EPA's projected schedule. While we agree that that RD work is important, there is no reason to distract companies from addressing a National Emergency during these critical weeks by imposing immediate deadlines for a project that won't be done for four years.

During the April 10 conference, we also noted that many companies are experiencing different types of challenges during this time and we explained the important distinction between different types of deadlines. While much of the work on the future sufficiency assessment can be completely remotely by consultants, just as this written statement was prepared predominantly by outside counsel, the initial UAO deadlines that EPA has imposed, and still refuses to extend, are deadlines requiring significant deliberation on long-term decisions by Schnitzer's management with far-reaching implications. EPA declined to grant an extension during the April 10 conference but suggested that we include the request in this statement.

Schnitzer Steel therefore requests a thirty-day extension on the date the UAO becomes effective and the April 20 deadline for the notice of intent to comply with the UAO to allow Schnitzer Steel to address the most pressing health and safety issues facing the company and its employees, without causing any substantial delay to EPA's RD schedule at the Site.

3. EPA refused to negotiate on the comments on the RD ASAO and SOW that Schnitzer Steel submitted more than nine months ago

In communications over the past several months, EPA has suggested that it has been willing to negotiate regarding RD, but Schnitzer Steel has not adequately responded. In fact, EPA has consistently refused to negotiate on any of the comments raised by Schnitzer Steel and has declined or ignored multiple requests by Schnitzer Steel to engage on the substance of these issues.

In June 2019, EPA requested that Schnitzer Steel provide redlines of EPA's draft RD ASAO and Statement of Work ("SOW") with proposed changes and comments for negotiation among the parties. On July 1, 2019, Schnitzer Steel complied with EPA's request and forwarded redlines for discussion. On July 18, 2019, EPA rejected all material changes and stated: "EPA will not accept nor negotiate the changes you have proposed." While EPA had previously requested that Schnitzer prepare the redlines, it then stated that Schnitzer would need to decide if it will enter into an ASAO and SOW "that conforms with EPA's model documents."

In its July 25, 2019 letter, Schnitzer Steel expressed disappointment with EPA's decision not to negotiate on our drafts. However, Schnitzer Steel stated that it remained willing to talk, and we proposed that EPA convene a meeting of the potential performing parties to discuss issues of common interest. EPA did not respond, nor did it ever convene any such meeting.

On October 23, 2019, EPA sent an email to Schnitzer Steel's counsel, ignoring the prior meeting request but asking that Schnitzer Steel provide an ASAO and SOW consistent with EPA's model in one week. On November 1, 2019, Schnitzer Steel responded, asking EPA to reconsider its refusal to negotiate on the redlines we submitted in July and asking again that EPA convene a meeting of potential performing parties. Once again, EPA ignored this request. During that time, however, EPA and the Pre-RD Group continued to meet to discuss the Pre-RD data and request for remedy updates.

The next communication from EPA to Schnitzer Steel regarding RD was the March 2, 2020 letter giving Schnitzer Steel one week to agree to execute an ASAOC with an attached SOW, both consistent with EPA's models, or EPA would pursue enforcement. Despite EPA's demands to Schnitzer Steel over the past several months, it has been consistently unwilling to negotiate on any substantive issue or to seek a mutually acceptable resolution for the concerns Schnitzer Steel has raised.

4. EPA's selected remedy should be updated based on the new Site-wide data either before, or concurrently with, the initial stages of Remedial Design

As summarized in the Pre-RD Group's 2019 PDI Evaluation Report, the 2018 Site-wide data demonstrated that the Site has recovered significantly in the last 16 years and showed that the remedy should be updated to reflect current Site conditions. EPA has acknowledged that the 2018 investigation was well-designed and implemented, that the new data is comprehensive and very useful, and that the results show that natural recovery is occurring. However, EPA has so far declined to update the remedy, indicating that it plans to proceed to RD, and to require parties to design with the ROD remedy that was based on outdated data from 2004.

On March 9, 2020, Schnitzer Steel joined with other parties in submitting the Petition proposing updates based on the new data. If these changes are implemented, the remedy could be completed much more quickly at less than half the cost with far less disruption to the community while achieving the same remedial action objectives as the ROD remedy.

During the April 10 conference, EPA stated that it views the Petition as distinct from its RD enforcement efforts. While we agree that EPA's determination on the Petition does not constitute an enforcement decision, EPA's refusal to update the remedy would significantly undermine RD work throughout the Site. As described in the Petition, if the same methodology used in the ROD for the 2004 data is applied to the 2018 data, the scope of the remedy would be reduced by more than half. If EPA continues down this path, it would require parties to design a remedy that was selected based on Site conditions that have not existed for 16 years. As a result, billions of dollars in additional work would be required over the next few decades with no significant benefit and with substantial additional costs, disruption to the community and environmental impacts resulting from the additional, unnecessary dredging.

The remedy should be updated before, or concurrently with, the initial phases of RD. In discussions with EPA, Schnitzer Steel offered to begin the sufficiency assessment and other preliminary RD tasks while those updates are pending to ensure no material delay in the start of RD work. Since it is impossible to separate the RD work from the remedy that is to be designed, the remedy should be updated now as requested in the Petition before the parties begin designing the wrong remedy for the Site.

Schnitzer Steel therefore requests that EPA defer the current deadlines on the UAO pending modification of the remedy as proposed in the Petition. If EPA agrees, Schnitzer Steel will work

with EPA to negotiate an ASAOC that ensures that work can commence on the initial RD tasks concurrently with the remedy modification process to avoid any material delay in RD.

5. EPA should provide further clarity regarding the promised “adjustments” to be made during RD

In its March 2, 2020 letter to the Pre-RD Group, EPA identified certain “adjustments” that EPA says will be made to the remedy during the RD phase based on issues discussed with the Pre-RD Group. EPA should provide further details regarding these adjustments to be made during RD.

For example, EPA acknowledged in its March 2 letter that the ROD could be construed as requiring dredging in all areas to be capped due to statements in the ROD that pre-design sediment bed elevations must be maintained during capping. While CERCLA sediment remedies can sometimes require both dredging and capping in some areas, it is not normal for remedies to automatically require dredging in all areas to be capped, nor is there any need for such a blanket requirement as explained in the Petition. In its March 2 letter, EPA agreed that it “can allow mitigation as part of the remedy to offset the effects of capping in the shallow and/or intermediate region.” During the April 10 conference, EPA confirmed that this statement was intended to mean that EPA staff will have discretion during RD to require, or not require, dredging in areas to be capped depending on site specific factors. EPA also noted that a Site-wide flood assessment plan will be prepared. However, EPA did not provide any further details on how these determinations may be made. Given the substantial time, expense and risks associated with additional unnecessary dredging, the SOW attached to the UAO should be revised to provide more guidance as to how and when these determinations will be made.

In its March 2 letter, EPA also agreed that the data used in the ROD to set dioxin/furan cleanup levels were limited. EPA stated that the Pre-RD data had supplemented that analysis, but that EPA in coordination with Oregon DEQ would fund the collection of additional upstream dioxin/furan data. The SOW attached to the UAO should be revised to provide further information as to how and when this additional information may be incorporated into the RD work. To the extent SMAs are delineated based on dioxin/furan exceedances alone, consideration needs to be given to the fact that the ROD RALs for these compounds are below background.

EPA also agreed in its March 2 letter that it may be reasonable during RD to replace some of the old data considered in the ROD with the new data from a 2018 Site-wide sampling, but stated that the decision would be made on a site-specific basis. During the April 10 conference, EPA confirmed that the decisions would be subject to EPA discretion but pointed us to EPA’s RD Guidelines for further information. However, the RD Guidelines merely note that decisions regarding data replacement will be made later on a site-specific basis. While decisions regarding specific data points can be addressed during RD, it would be very helpful if EPA could identify Site-wide data replacement rules and factors to be considered in making those decisions now.

More broadly, the Pre-RD Group and EPA discussed the draft RD Guidelines at a January 9, 2020 meeting. During that meeting, the Pre-RD Group identified various concerns with the draft. Among those concerns was the fact that the RD Guidelines cannot alter conflicting requirements in the ROD and can be changed at any time. As a result, the RD Guidelines provides no certainty to performing parties as to how the design will proceed. The Pre-RD Group also expressed concerns relating to the long-term climate assessments, over-dredging of the navigation channel, and the handling of dioxin/furan non-detects. Since those issues were not addressed in EPA's March 2 letter to the Pre-RD Group, Schnitzer Steel requests that EPA provide a response to those concerns.

6. EPA still has not provided information promised in 2019 regarding its analysis of the 2018 data

While EPA has demanded that Schnitzer Steel respond to the UAO's short deadlines in the midst of a National Emergency, EPA still has not provided key information it promised Schnitzer Steel and the other members of the Pre-RD Group more than five months ago.

In September 2019, the Region provided comments on the Pre-RD Group's PDI Evaluation Report, rejecting the analysis and conclusions. While EPA had agreed to a dispute resolution process in the Pre-RD Group's ASAOC, it declined to allow the Pre-RD Group to use that process to address any disagreements over the analysis. EPA also declined a request from the Pre-RD Group to provide the supporting materials and back-up information used in preparing its comments. On October 3, 2019, the Pre-RD Group filed a Freedom of Information Act ("FOIA") request for the materials. On November 4, 2020, EPA issued an interim response to the FOIA, estimating that the agency would not be able to complete the request until April 2020.

On November 15, 2019, the Pre-RD Group met with EPA's Administrator. When the Administrator learned that Regional staff had refused to engage in any meaningful technical dialog on the PDI Evaluation Report and had not yet provided its analysis, he directed Regional staff to deliver the requested materials to the Pre-RD Group immediately.

In the interim, the Pre-RD Group also discovered that Regional staff had prepared a draft report of their own directed at reaching a contrary interpretation of the Pre-RD data, and that EPA had already circulated the draft report to the Natural Resource Trustees and Oregon Department of Environmental Quality. Despite our repeated inquiries regarding EPA's position, at no time had the Region disclosed to the Pre-RD Group that any such counter report was being prepared based on the data the Pre-RD Group had collected under EPA oversight.

At 4:45 pm the night before Thanksgiving, EPA provided the draft CDM Smith report and certain additional charts and figures prepared after and to supplement the draft CDM Smith report, but not the comments that the Trustees and DEQ had provided on the report or critical elements of the back-up to EPA's evaluations of the data. On November 27, 2019, EPA issued a final response to the FOIA request concluding its response to the request. However, EPA did not provide information documenting their calculations such as the data summing rules, statistical tests, GIS layers and scripts and other information necessary to explain how they arrived at the conclusions summarized in the report.

At a meeting on December 9, 2019, CDM Smith presented its findings to the Pre-RD Group. This presentation revealed disturbing problems since key conclusions presented by the Region were not supported by the data or analysis. Moreover, while the Region claimed that the CDM Smith had prepared the report as a response to the Pre-RD Group's October 3, 2019 FOIA request, many of the materials in the draft report had date stamps as early as January 2019, indicating that work on this counter narrative had started almost a year earlier. At that meeting, the Pre-RD Group reiterated its request for the additional backup materials. EPA and the Pre-RD Group agreed to handle this information request outside the formal FOIA channel, and we followed up with a specific list of missing materials on December 27, 2019, a copy of which is appended to this statement.

At a follow-up meeting on January 9, 2020, EPA promised to provide the Trustees and Oregon DEQ comments on the draft CDM Smith report promptly, and to forward the requested backup materials for the CDM Smith report within three to four weeks.

While we received the comments from the Trustees and Oregon DEQ, we have never received the other missing materials specified in our December 27, 2019 list, including the requested backup for the CDM Smith report. These materials will assist us in understanding EPA's response to the Petition and would be useful for any discussions between EPA and the petitioners, which we would encourage. These materials could also help inform future discussions regarding RD work.

We therefore request that EPA provide the missing information as soon as possible. In addition, before requiring Schnitzer Steel to state whether it will comply with the UAO, it would be helpful if EPA can explain the Region's reluctance to share its analysis with its partners in the Pre-RD effort and provide assurances that Regional staff will be more forthcoming with their positions and analyses if Schnitzer Steel agrees to comply with the UAO.

7. RD work in the RM 3.5E Project Area should be timed and sequenced to ensure that it does not need to be redone later due to uncontrolled sources or stale data

In the ROD, EPA assumed that future remedial action ("RA") work would be sequenced in different portions of the river with the dredging and capping proceeding concurrently in a few areas but not all at the same time. Sequencing of RA work is necessary both because dredging in some areas would cause additional impacts downstream and because it would be infeasible to conduct more than a dozen huge projects at this scale simultaneously.

The RM 3.5 E Project Area is near the downstream end of the Site, and it includes significant depositional areas that receive sediments and other materials from upstream. Moreover, there are various upland properties owned by third parties that are still uncontrolled sources to the Sediment Management Areas ("SMAs") in this area. If the RD field sampling and subsequent RD work is completed in this area before the upland and upstream sources are controlled, there is a significant risk that the later stages of work would need to be redone to assess the results of the ongoing releases. Moreover, if there is a significant gap in time between the completion of RD and remedy construction, we may face the very same type of data recency issues that

plagued the ROD, and the old data collected now may need to be replaced with new RD data and updated designs before the RA work starts.

In its July 2019 redlines of the RD UAO and SOW, Schnitzer Steel proposed that RD in the RM 3.5E Project Area be phased such that the initial tasks like the sufficiency assessment could be done now while field sampling would be deferred until upland and upstream sources are controlled. At that time, Schnitzer Steel proposed that only the initial work would be required under the ASAO, and that subsequent phases of work would be subject to mutual agreement under the ASAO, although if no agreement could be reached, EPA would retain all of its enforcement authority to require additional work. These changes were among those that EPA rejected out of hand and refused to negotiate on.

We understand that EPA will not accept any “off-ramps” for completion of RD work and will require parties to perform 100% design. However, during the RD process, it will be necessary for EPA to evaluate the sequencing of RA work and to defer later phases of RD work in certain areas until upstream and upland source are controlled and until closer to the anticipated time of remedy construction.

During the April 10 conference, we noted that the SOW does not currently provide any process for making these critical decisions on timing and sequencing, nor does the SOW schedule suggest that the timing of later stages of work may be dependent on these findings. Rather, the SOW schedule suggests that each RD task will be performed after the last was completed.

Given site-specific factors in the RM 3.5 Project Area, Schnitzer Steel requests that EPA revise the SOW to phase the RD work, with work progressing on each phase once EPA has considered relevant factors and determined that the next phase should proceed. For example, the RM 3.5E Project Area receives drainage from a very large and complex drainage basin that includes dozens of properties owned by various third parties. Any sufficiency assessment would identify substantial source sufficiency data gaps that need to be evaluated with media-specific sampling, and the results would likely confirm that media in some areas will require additional source control actions. The agency determinations regarding source control actions could include infrastructure and drainage changes and other modifications that could inform the RD field sampling plan in the PDI Work Plan. If the PDI Work Plan is prepared before the source control measures are identified, it may need to be revised once those changes are known. If the field sampling is performed before sources are controlled, certain areas may need to be resampled later.

However, the SOW requires both the Draft Sufficiency Assessment Report and the Draft PDI Work Plan to be submitted to EPA concurrently 90 days after the effective date of the UAO, without acknowledging any phasing of the work.

Given these considerations in the RM 3.5E Project Area, Schnitzer Steel strongly requests that EPA modify the timing and phasing of the RD work in this area as described in the SOW such that the work would start with the sufficiency assessment, followed by a source sufficiency-

focused sampling effort. Once EPA concludes that the sources are adequately assessed and that any source control measures have been identified with milestones and an implementation schedule, EPA can consider the optimal timing of field sampling in this area. Among the factors to be considered at that time would be the anticipated completion date of source control efforts to ensure that upland and upstream sources are controlled prior to sampling as well as the projected start date of RA work in this downstream portion of the River to ensure that the field sampling results and subsequent designs are not stale by the time construction of the remedy is expected to start.

Schnitzer Steel believes that Item 10 in Section 6.2 of the SOW Schedule providing for Preliminary (30%) RD is more than sufficient to provide EPA with the necessary information to develop a sequencing plan for RA. We therefore believe that, given the site-specific factors discussed above, particularly the location of this project area at the downstream end of the Site, Item 11 Intermediate (60%) RD and Item 12 Pre-final (95%) RD should have deadlines tied to when RA for this project area is expected to commence such as 360 days and 180 days, respectively, before expected the commencement date of remedial action. This will ensure that such designs are not stale and do not have to be redone potentially 10 or more years later than the current lock-step schedule.

This phasing would allow the RD work to proceed in a more orderly fashion while reducing the risk of substantial waste. The SOW appears to acknowledge these risks, for example, by noting that a Supplemental PDI Work Plan may be required after the initial sampling is complete. Phasing the work as proposed above could help limit the scope of any additional round of sampling and prevent unnecessary duplication of effort.

8. EPA should provide further clarity regarding its assurances to make “reasonable accommodations” based on COVID-19, including regarding the sufficiency assessment

In its March 26 letter and again at the April 10 conference, EPA stated that it will consider “reasonable accommodations” in the event certain work deadlines cannot be met due to the COVID-19 public health crisis. Later that same day of April 10, EPA issued supplemental Interim Guidance on Site Field Work Decisions due to Impacts of COVID-19, which identified certain factors to be considered in deciding on the timing of field work. That guidance stated that non-field work that can be conducted remotely generally should continue, but it recognized that even non-field work may be impacted if needed materials become unavailable.

Schnitzer Steel requests that EPA provide further clarity as to the types of circumstances that it believes may warrant “reasonable accommodations.” For example, one of the initial deliverables under the UAO and SOW is the draft sufficiency assessment, which would be due on July 19 if the UAO becomes effective on April 20 and no extensions are granted. Schnitzer Steel agrees that this sufficiency assessment and source control efforts should be among the initial tasks of any RD work in the RM 3.5E Project Area. However, Schnitzer Steel has never owned or operated on the vast majority of upland properties that constitute potential ongoing

sources to the RM 3.5E Project Area. In assessing these sources, Schnitzer Steel can supplement existing information in its files with data and information available on-line but otherwise will be dependent on third parties to provide the needed information regarding their properties. Moreover, since the data will likely be provided in various forms, it would need to be converted to EPA's electronic data deliverable format.

Many of the owners and operators of the potential source properties may be focused on their own COVID-19 response efforts, and some may experience difficulties in compiling materials not easily accessible remotely. As a result, it may not be possible to meet a July 19 deadline for the draft sufficiency assessment despite best efforts to comply.

Schnitzer Steel therefore requests that, if it chooses to comply with the UAO, the deadline for submission of the sufficiency assessment be extended at least thirty-days. If EPA is not inclined to grant such an extension now, we request that EPA provide further clarity as to whether the potential unavailability of information from third parties as described above could constitute sufficient cause for an extension.

9. The RM 3.5 East Project Area upstream boundary should be moved to the upstream Burgard Yard property line

The upstream boundary of the RM 3.5 East Project Area as depicted in Appendix B of the UAO appears to include in-water areas adjacent to approximately 200 feet of shoreline in the downstream portion of the Port of Portland's Terminal 4 facility. That in-water area is encompassed within the Terminal 4 Removal Action Area subject to EPA's Administrative Settlement Agreement and Order on Consent ("ASAO") with the Port of Portland, which extends to the property line between Terminal 4 and Burgard Yard. The downstream border of RM 3.5E Project Area should therefore be revised to coincide with the upstream border of the Terminal 4 Project Area to avoid confusion and duplication of effort.

10. A standard set of Site-wide sediment data should be compiled for use as a baseline for subsequent additional data collection in the various project areas

During the April 10 conference, EPA stated that it intends to work with the performing parties during RD to coordinate RD work in the various project areas. Schnitzer Steel agrees that such efforts are needed to ensure that the RD work proceeds in a consistent, coordinated manner throughout the Site.

To advance those coordination efforts, Schnitzer Steel recommends that EPA compile a standard set of the Site-wide sediment data for use as the baseline for RD work in the different project areas. Given the various data sets and potential differing approaches to implementing data recency rules under EPA's RD Guidelines, it would be very helpful if the performing parties in each project area can start with the same set of common Site-wide sediment data that can then be augmented by the area-specific data as developed.

11. The UAO's "Findings of Fact" should be revised to acknowledge the United States' own substantial responsibility for contamination in the RM 3.5 E Project Area

EPA's "Findings of Fact" at Section IV of the UAO include various allegations regarding the Site, the RM 3.5E Project Area and the respondents, Schnitzer Steel and MMGL LLC ("MMGL"). Regarding alleged sources of impacts in the RM 3.5E Project Area, the Findings of Fact focused exclusively on Schnitzer Steel and MMGL.

Schnitzer Steel does not agree with certain Findings as Fact listed in the UAO. For example, Schnitzer Steel disputes EPA's characterization at paragraph 27 of purported "significantly high levels" of certain contaminants in automobile shredder residue and other references to "large quantities" of various materials. Moreover, Schnitzer Steel takes issue with EPA's presentation of the facts and data so as to create the misimpression that Schnitzer Steel is substantially to blame for the cited contamination concentrations within the RM 3.5E Project Area.

In fact, numerous other entities have owned and operated on properties in the vicinity of the RM 3.5E Project Area, including significant industrial operations. The largest facility that ever operated in this portion of the river was the United States' own shipyard operated by its contractor Oregon Shipbuilding Corporation ("OSC Shipyard") during World War II. The OSC Shipyard was the largest industrial operation in the history of the City of Portland, with operations involving large quantities of PCBs, PAHs, dioxin/furan and metals among other constituents of concern and uncontrolled discharges of stormwater, sanitary sewage and other releases to the SMAs within the RM 3.5E Project Area.

Nonetheless, EPA chose to direct this UAO solely to Schnitzer Steel and MMGL. While we understand that the Findings of Fact must include allegations regarding the respondents, EPA's failure to reference the United States' own significant responsibility for conditions to be addressed in the RD work for the RM 3.5E Project Area presents a distorted view of the facts.

Schnitzer Steel therefore requests that the following additional facts be inserted into the UAO's Findings of Facts starting at paragraph 22 to present a more complete and accurate presentation. All this information is contained in EPA's files for the Site, including the 104(e) responses from the U.S. Maritime Administration, Schnitzer Steel and other parties.

22. Numerous industrial facilities have operated adjacent to the River Mile 3.5 East Project Area from 1938 to the present. These operations by various parties have included shipbuilding operations, bulk petroleum storage and distribution facilities, warehousing and outdoor storage, metal work and pipe manufacturing operations, electrolytic manganese dioxide production and metal recycling operations.

23. By far the largest industrial operation adjacent to the River Mile 3.5 East Project Area was the Oregon Shipbuilding Corporation Shipyard ("OSC Shipyard"), which was owned by the U.S. Maritime Commission and operated by the United States' contractor Oregon Shipbuilding Corporation to manufacture ships during World War II. From 1941

to 1945, the OSC Shipyard built and launched more than 450 ships including 330 Liberty Ships and 91 Victory Ships, each weighing more than 10,000 tons and measuring 400 feet in length. At its peak, the Shipyard employed more than 30,000 workers. The OSC Shipyard included eleven shipways and a 2,000 foot long outfitting basin, now known as the IT Slip. The Shipyard spanned more than 300 acres, including nearly the entire shoreline of the Project Area as well as the IT Slip. Operations included metal cutting and shaping, installation and use of electrical equipment and motors, painting, sandblasting, chromic acid dipping, and wire and cable burning. The OSC Shipyard used substantial quantities of materials containing hazardous substances including transformer oil, lacquers, shellacs, anti-fouling paint, lead-based paint, marine glue, engine and dynamo oil, cutting oil, fuel oil, lubricants, pesticides, bitumen and thousands of gallons of creosote. These materials contained large quantities of contaminants of concern at the Site including PCBs, PAHs and heavy metals. In addition, more than 40 electrical substations were located throughout the OSC Shipyard including eight in the shipways and five on the outfitting dock, which burned in a large 1945 fire. Given the period of the operation and the United States' insistence on prioritizing speed of production for the war effort, no significant environmental controls were in place to reduce releases of hazardous substances into the environment. Twenty-six outfalls discharged untreated stormwater runoff from most of the Shipyard directly into the River and IT Slip. An additional six outfalls discharged raw, untreated sewage into the River. After the OSC Shipyard ceased operating, substantial portions of the site were left unused for decades but were periodically inundated with water during flood events.

12. Prior to the UAO becoming effective, EPA should disclose any plans it may have to switch its designated staff for the RM 3.5E Project Area

During the April 10, 2020 conference, we inquired regarding EPA's staffing for the RM 3.5E Project Area. EPA confirmed that Eva DeMaria will be the Remediation Project Manager for this area as indicated in the UAO and stated that Caleb Shafer will be the Team Leader for all project areas, with both Eva and Caleb reporting to Region 10's Director of Remediation.

However, we believe that EPA also indicated that it may make certain staff changes in some project areas in the next couple weeks. The current deadline for Schnitzer Steel to indicate whether it plans to comply with the UAO is April 20 unless EPA grants the requested extension. While EPA has the discretion to determine its own internal staffing, we request that EPA disclose any plans it may have to change the staffing for the RM 3.5E Project Area before the UAO becomes effective to alleviate concerns regarding an immediate staffing change.